

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9774 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKER and  
MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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AEC LTD.

Versus

ELECTRICITY MAZDOOR SABHA

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Appearance:

NANAVATI ASSOCIATES for Petitioner

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CORAM : MR.JUSTICE C.K.THAKKER and  
MR.JUSTICE A.L.DAVE

Date of decision: 26/11/98

ORAL JUDGEMENT

This petition is filed by the Ahmedabad Electricity Co. Ltd. for an appropriate writ, direction or order quashing and setting aside the impugned order dated November 11, 1998 at Annexure A to the petition passed by the Industrial Court, Ahmedabad. By the said order, the Industrial Court, Ahmedabad held that applications Exhs.138 & 139 filed by the Company will be decided alongwith application Exh.5 preferred by the

Union for interim relief. It is also stated that since arguments in applications Exh.138 and 139 were over, an appropriate order will be passed after hearing the arguments of the company on Ex.5. i.e. the application filed by the Union interim relief.

2. It is not in dispute between the parties that the main matter is Reference (IC) 133 of 1995 and is pending before the Industrial Court. Though several contentions were raised by Mr.Nanavaty, Learned Counsel for the petitioner and submissions were also made by Mr.Clerk, Learned Advocate appearing for the Union, we do not propose to enter into larger questions in view of the fact that the reference is pending and the impugned order is purely interlocutory in nature in as much as by the said order the Court has not decided any issue. It has directed that all the applications will be heard together.

3. So far as application Ex.5 is concerned, interim relief is prayed by the Union as stated therein. Exh.138 was filed by the company on July 10, 1998 and the following prayer was made:-

"3. The Company, therefore, prays that the application Ex.5 for the grant of interim relief submitted by the Union should be dismissed by the Hon'ble Court till the said Award in Reference (IC) No.132 of 1993 dated 13.1.1998 is not terminated."

The Company, therefore prayed that the application Ex.5 for the grant of interim relief submitted by the Union should be dismissed by the Honourable Court till the award in Reference (IC) 132/92 dated 13.1.1998 is not terminated. Similarly Ex.139 was also filed by the Company on 10.7.1998. In Para 8, the following prayers were made:-

8. Based on the facts aforesaid, the Company prays as under:-

(a) That the Hon'ble Court may be pleased to stay the further proceedings in this Reference till the Special Civil Application No.2682 of 1998 filed by the Company before the Hon'ble High Court of Gujarat comes for admission and stay.

Alternatively

(b) That the Hon'ble Court may be pleased to

refer the following important question of law to the Full Bench of the Industrial Court viz. when 99% of 4500 employees employed by the Company have given their individual undertakings in writing too agree to abide by the terms of settlement offered by the Petitioner Company in full and final satisfaction of all the disputes including the dispute covered in Reference (IC) No.133 of 1995 whether such a settlement is not binding to other employees and that under the circumstances whether the Representative Union is still legally not entitled to proceed with the Reference challenging the terms of the said settlement accepted by 99% of the employees employed. (In this connection the company relies on the judgement of the Supreme Court in the matter of Herbertson Limited reported in 1997, Lab.I.C. p.162 and in M/s.Eng. & Tata Locomotive Ltd. reported in 1981 (43) F.L.R., p. 354.

(c) Any other relief that the Hon'ble Court deems fit be granted."

As observed by the Court, arguments on two applications Exh.138 and 139 were over. On application Ex.5, evidence was recorded and arguments of the Union was over. The Company was to give reply on the arguments advanced by the Union.

9. It appears that a contention was raised by the Company that before any order is passed on application Ex.5, two applications filed by the Company (Exh.138 and 139) should be decided first and till the said decision is arrived at by the Court, no order should be passed on Ex.5. In other words therefore, the contention of the Company was something in the nature of request that two applications Ex.138 and 139 should be decided first by treating the issues raised therein as a preliminary issue.

10. Though it was stated in the petition that the Court has committed an error in rejecting both the applications, looking to the order passed by the Court, it is clear that the applications are not rejected. In fact, a grievance is made by Mr.Clerk appearing on behalf of the Union that it was an incorrect statement made by the Company and that costs may be awarded to the Union.

11. In the facts and circumstances of the case, we

are of the view that this is not a fit case which requires interference in exercise of extra ordinary jurisdiction under Article 226 and/or supervisory jurisdiction under Article 227 of the Constitution. The order is clearly interlocutory in nature. Neither application Ex.138 nor Ex.139 has been rejected. The only order passed by the Court is that the applications Ex.138 and 139 will be decided alongwith application Exh.5. The order, in our opinion, is discretionary in nature and since it cannot be said that by passing such order any illegality has been committed which is likely to cause prejudice or result into miscarriage of justice, we do not think it proper to interfere with the said order at this stage. Though various judgements have been cited by the parties, in view as pendency of Reference as also applications, we dismiss the petition only on the ground that the order is purely interlocutory in nature. Accordingly, the petition stands dismissed as no question is decided by the Court. No order as to costs.

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